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SENATE

{ REPORT
109-245

PITKIN COUNTY LAND EXCHANGE ACT OF 2006

APRIL 20, 2006.—Ordered to be printed

Filed, under authority of the order of the Senate of April 7, 2006

Mr. DOMENICI, from the Committee on Energy and Natural
Resources, submitted the following

R E P O R T

[To accompany H.R. 1129]

The Committee on Energy and Natural Resources, to which was referred the Act (H.R. 1129) to authorize the exchange of certain land in the State of Colorado, having considered the same, reports favorably thereon with an amendment and recommends that the Act, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Pitkin County Land Exchange Act of 2006”.

SEC. 2. PURPOSE.

The purpose of this Act is to authorize, direct, expedite, and facilitate the exchange of land between the United States, Pitkin County, Colorado, and the Aspen Valley Land Trust.

SEC. 3. DEFINITIONS.

In this Act:

(1) ASPEN VALLEY LAND TRUST.—

(A) IN GENERAL.—The term “Aspen Valley Land Trust” means the Aspen Valley Land Trust, a nonprofit organization as described in section 501(c)(3) of the Internal Revenue Code of 1986.

(B) INCLUSIONS.—The term “Aspen Valley Land Trust” includes any successor, heir, or assign of the Aspen Valley Land Trust.

(2) COUNTY.—The term “County” means Pitkin County, a political subdivision of the State of Colorado.

(3) FEDERAL LAND.—The term “Federal land” means—

(A) the approximately 5.5 acres of National Forest System land located in the County, as generally depicted on the map entitled “Ryan Land Ex-

change-Wildwood Parcel Conveyance to Pitkin County” and dated August 2004;

(B) the 12 parcels of National Forest System land located in the County totaling approximately 5.92 acres, as generally depicted on maps 1 and 2 entitled “Ryan Land Exchange-Smuggler Mountain Patent Remnants Conveyance to Pitkin County” and dated August 2004; and

(C) the approximately 40 acres of Bureau of Land Management land located in the County, as generally depicted on the map entitled “Ryan Land Exchange-Crystal River Parcel Conveyance to Pitkin County” and dated August 2004.

(4) NON-FEDERAL LAND.—The term “non-Federal land” means—

(A) the approximately 35 acres of non-Federal land in the County, as generally depicted on the map entitled “Ryan Land Exchange-Ryan Property Conveyance to Forest Service” and dated August 2004; and

(B) the approximately 18.2 acres of non-Federal land located on Smuggler Mountain in the County, as generally depicted on the map entitled “Ryan Land Exchange-Smuggler Mountain-Grand Turk & Pontiac Claims Conveyance to Forest Service” and dated August 2004.

(5) SECRETARY.—The term “Secretary” means the Secretary of Agriculture.

SEC. 4. LAND EXCHANGE.

(a) IN GENERAL.—If the County offers to convey to the United States title to the non-Federal land that is acceptable to the Secretary, the Secretary and the Secretary of the Interior shall—

(1) accept the offer; and

(2) on receipt of acceptable title to the non-Federal land, simultaneously convey to the County, or at the request of the County, to the Aspen Valley Land Trust, all right, title, and interest of the United States in and to the Federal land, except as provided in section 5(d), subject to all valid existing rights and encumbrances.

(b) TIMING.—It is the intent of Congress that the land exchange directed by this Act shall be completed not later than 1 year after the date of enactment of this Act.

SEC. 5. EXCHANGE TERMS AND CONDITIONS.

(a) EQUAL VALUE EXCHANGE.—The value of the Federal land and non-Federal land—

(1) shall be equal; or

(2) shall be made equal in accordance with subsection (c).

(b) APPRAISALS.—The value of the Federal land and non-Federal land shall be determined by the Secretary through appraisals conducted in accordance with—

(1) the Uniform Appraisal Standards for Federal Land Acquisitions;

(2) the Uniform Standards of Professional Appraisal Practice; and

(3) Forest Service appraisal instructions.

(c) EQUALIZATION OF VALUES.—

(1) SURPLUS OF NON-FEDERAL LAND.—If the final appraised value of the non-Federal land exceeds the final appraised value of the Federal land, the County shall donate to the United States the excess value of the non-Federal land, which shall be considered to be a donation for all purposes of law.

(2) SURPLUS OF FEDERAL LAND.—

(A) IN GENERAL.—If the final appraised value of the Federal land exceeds the final appraised value of the non-Federal land, the value of the Federal land and non-Federal land may, as the Secretary and the County determine to be appropriate, be equalized by the County—

(i) making a cash equalization payment to the Secretary;

(ii) conveying to the Secretary certain land located in the County, comprising approximately 160 acres, as generally depicted on the map entitled “Sellar Park Parcel” and dated August 2004; or

(iii) using a combination of the methods described in clauses (i) and (ii).

(B) DISPOSITION AND USE OF PROCEEDS.—

(i) DISPOSITION OF PROCEEDS.—Any cash equalization payment received by the Secretary under clause (i) or (iii) of subparagraph (A) shall be deposited in the fund established by Public Law 90–171 (commonly known as the “Sisk Act”) (16 U.S.C. 484a).

(ii) USE OF PROCEEDS.—Amounts deposited under clause (i) shall be available to the Secretary, without further appropriation, for the acquisition of land or interests in land in Colorado for addition to the National Forest System.

(d) CONDITIONS ON CERTAIN CONVEYANCES.—

(1) CONDITIONS ON CONVEYANCE OF CRYSTAL RIVER PARCEL.—

(A) IN GENERAL.—As a condition of the conveyance of the parcel of Federal land described in section 3(3)(C) to the County, the County shall agree to—

- (i) provide for public access to the parcel; and
- (ii) require that the parcel shall be used only for recreational, fish and wildlife conservation, and public open space purposes.

(B) REVERSION.—At the option of the Secretary of the Interior, the parcel of land described in section 3(3)(C) shall revert to the United States if the parcel is used for a purpose other than a purpose described in subparagraph (A)(ii).

(2) CONDITIONS ON CONVEYANCE OF WILDWOOD PARCEL.—In the deed of conveyance for the parcel of Federal land described in section 3(3)(A) to the County, the Secretary shall, as determined to be appropriate by the Secretary, in consultation with the County, reserve to the United States a permanent easement for the location, construction, and public use of the East of Aspen Trail.

SEC. 6. MISCELLANEOUS PROVISIONS.

(a) INCORPORATION, MANAGEMENT, AND STATUS OF ACQUIRED LAND.—

(1) IN GENERAL.—Land acquired by the Secretary under this Act shall become part of the White River National Forest.

(2) MANAGEMENT.—On acquisition, land acquired by the Secretary under this Act shall be administered in accordance with the laws (including rules and regulations) generally applicable to the National Forest System.

(3) LAND AND WATER CONSERVATION FUND.—For purposes of section 7 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460l–9), the boundaries of the White River National Forest shall be deemed to be the boundaries of the White River National Forest as of January 1, 1965.

(b) REVOCATION OF ORDERS AND WITHDRAWAL.—

(1) REVOCATION OF ORDERS.—Any public orders withdrawing any of the Federal land from appropriation or disposal under the public land laws are revoked to the extent necessary to permit disposal of the Federal land.

(2) WITHDRAWAL OF FEDERAL LAND.—On the date of enactment of this Act, if not already withdrawn or segregated from entry and appropriation under the public land laws (including the mining and mineral leasing laws) and the Geothermal Steam Act of 1970 (30 U.S.C. 1001 et seq.), the Federal land is withdrawn, subject to valid existing rights, until the date of the conveyance of the Federal land to the County.

(3) WITHDRAWAL OF NON-FEDERAL LAND.—On acquisition of the non-Federal land by the Secretary, the non-Federal land is permanently withdrawn from all forms of appropriation and disposal under the public land laws (including the mining and mineral leasing laws) and the Geothermal Steam Act of 1970 (30 U.S.C. 1001 et seq.).

(c) BOUNDARY ADJUSTMENTS.—The Secretary, the Secretary of the Interior, and the County may agree to—

- (1) minor adjustments to the boundaries of the parcels of Federal land and non-Federal land; and
- (2) modifications or deletions of parcels and mining claim remnants of Federal land or non-Federal land to be exchanged on Smuggler Mountain.

PURPOSE OF THE MEASURE

The purpose of H.R. 1129 is to authorize the exchange of certain land in the State of Colorado.

BACKGROUND AND NEED

H.R. 1129 authorizes a small land exchange in Pitkin County, Colorado, among the Bureau of Land Management (BLM), the Forest Service, and the county.

The exchange proposed in H.R. 1129 is rooted in the Forest Service's acquisition of all but 35 acres of the Ryan family lands in Pitkin County, Colorado, in 1984. The remaining 35 acre Ryan parcel is one of the most scenic parcels of private land in Pitkin County, and the Forest Service has long desired to acquire it in order to protect the scenic value of the original Ryan tract. After failing to secure Land and Conservation Funds to purchase the parcel, the Forest Service pursued an administrative exchange.

The agency had great difficulty bringing the land exchange through the administrative process. At least twice since 1992, when the Forest Service began to pursue an exchange, either the Forest Service or the BLM has reversed its position, each time leaving it to Pitkin County to purchase the private lands in order to facilitate the exchange. In 2000, Pitkin County and local preservation groups purchased the property because the administrative exchange was taking too long to complete.

The Forest Supervisor of the White River National Forest gave written assurances of making the exchange a high priority in 2000, yet the Forest Service has not finalized an administrative exchange. In the spring of 2004, the Forest Service, BLM and Pitkin County developed an exchange proposal for the third time that was agreeable to all three parties. Frustrated by the nearly two decade process, Pitkin County worked with the Colorado delegation to introduce legislation to finalize the exchange.

LEGISLATIVE HISTORY

Representative Mark Udall introduced H.R. 1129 on March 3, 2005. The Subcommittee on Forests and Forest Health of the Committee on Resources held a hearing on H.R. 1129 on July 14, 2005, and favorably reported the bill, with amendment, by unanimous consent on October 25, 2005 (H. Rept. 109–252). The House of Representatives passed H.R. 1129 on motion to suspend the rules and passed the bill, as amended, by voice vote on December 6, 2005.

Senator Allard introduced a companion bill (S. 100) on January 24, 2005, for himself and Senator Salazar. Similar bills (S. 2904 and H.R. 5142) were introduced late in the 108th Congress, but did not receive consideration prior to the end of the 108th Congress.

The Subcommittee on Public Lands and Forests held a hearing on May 11, 2005 (S. Hrg. 109–104). At the business meeting on March 8, 2006, the Committee on Energy and Natural Resources ordered H.R. 1129 favorably reported with an amendment in the nature of a substitute.

COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in open business session on March 8, 2006, by a voice vote of a quorum present, recommends that the Senate pass H.R. 1129, if amended as described herein.

COMMITTEE AMENDMENT

The Committee adopted an amendment in the nature of a substitute. As a condition of the conveyance of the Crystal River parcel, the substitute requires, the county provide public access to the parcel and use it only for recreation, fish and wildlife, and public open space purposes. The substitute also adds a purpose statement, renumbers the subsequent sections and makes a number of technical corrections, including to the appraisal instructions and the instruction.

SECTION-BY-SECTION ANALYSIS

Sections 1 and 2—provide the short title and purpose for the legislation.

Section 3—provides definitions, including descriptions of the properties to be exchanged as follows:

(1) Pitkin County would transfer two parcels to the Forest Service: (A) a 35-acre tract (known as the “Ryan property”) near the ghost town of Ashcroft; and (B) 18.2 acres (patented mining claims) on Smuggler Mountain near Aspen, Colorado;

(2) The Federal Government would transfer to the county three parcels: (A) a 5.5-acre tract south of Aspen known as the “Wildwood” parcel; (B) 5.92 acres in 12 scattered locations on Smuggler Mountain that abut or are near lands now owned by the county; and (C) a 40-acre tract of BLM land along the Crystal River, which will be subject to a permanent conservation easement limiting future use to recreational, fish and wildlife, and open space purposes.

Section 4—directs the exchange between the county and the Federal Government provides that it is Congress’ intent that the exchange be completed within one year of passage of the legislation.

Section 5—provides the terms and conditions of the exchange, including the use of the Uniform Appraisal Standards and the Forest Service appraisal instructions. It also contains equalization provisions.

Section 5(d)(1) provides conditions for the conveyance of the Crystal River Parcel, including a conservation easement that limits use to recreational, fish and wildlife conservation and open space purposes and includes a reversionary clause if the parcel is used for other purposes.

Section 5(d)(2) provides that the Secretary shall reserve an easement for the construction and use of the East of Aspen Trail in the deed of conveyance for the Wildwood Parcel.

Section 6—provides for the incorporation, management, and status of the acquired lands.

Section 6(c) authorizes the Secretaries of the Interior and Agriculture to agree to minor boundary adjustments to the parcels of Federal land and non-Federal land; and modifications or deletions of parcels and mining claim remnants of Federal land or non-Federal land, to be exchanged on Smuggler Mountain.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of costs of this measure has been provided by the Congressional Budget Office.

H.R. 1129—Pitkin County Land Exchange Act of 2005

H.R. 1129 would authorize the Secretary of Agriculture and the Secretary of the Interior to convey a total of about 51 acres of federal land to Pitkin County, Colorado, in exchange for roughly 53 acres of land owned by that county. If the values of land to be exchanged are not approximately equal, those parties could exchange cash payments or additional land to make up any difference. H.R. 1129 specifies conditions for the county’s use of the land it would receive through the proposed exchange. The land conveyed to the federal government under the bill would be added to the White River National Forest.

Based on information from the Forest Service and the Bureau of Land Management, CBO estimates that implementing H.R. 1129 would not significantly affect the federal budget. According to those agencies, the federal land to be conveyed currently generates no

significant receipts and is not expected to do so over the next 10 years; therefore, we estimate that the proposed exchange would not reduce federal receipts. We further estimate that H.R. 1129 would not increase federal administrative or land-management costs by more than \$500,000 per year. Any spending for such costs would be subject to appropriation. Enacting H.R. 1129 would not affect revenues.

H.R. 1129 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments. This exchange would be voluntary on the part of Pitkin county as would any associated expenses.

The CBO staff contact for this estimate is Megan Carroll. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out H.R. 1129.

The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of H.R. 1129.

EXECUTIVE COMMUNICATIONS

The Administration has not testified on H.R. 1129, but it did testify on S. 100, a companion bill, at a Public Lands and Forests Subcommittee hearing held on May 11, 2005, as follows:

STATEMENT OF JOEL HOLTROP, U.S. FOREST SERVICE, DEPUTY CHIEF FOR NATIONAL FOREST SYSTEM, DEPARTMENT OF AGRICULTURE

Mr. Chairman and members of the subcommittee, thank you for the opportunity to appear before you today in order to provide the Department's views on S. 100—Pitkin County Land Exchange Act of 2005.

S. 100 would direct the Secretary of Agriculture to exchange thirteen parcels of National Forest System lands (totaling 11.42 acres) and the Secretary of the Interior to exchange one 40-acre parcel of Bureau of Land Management (BLM) land for two parcels of non-federal land (35 acres and 18.2 acres) if Pitkin County, Colorado offers to convey title to the non-federal land that is acceptable to the Secretary of Agriculture. The lands acquired by the Secretaries would then become part of the White River National Forest in Colorado. The federal lands would be conveyed to Pitkin County, Colorado.

The Department would have no objection to the enactment of S. 100 if the reversionary clause in section

5(d)(1)(B) is modified. DOI would like the opportunity to work with the Committee and the sponsors of the bill on amendments to ensure that the reversionary clause is discretionary for the Secretary of the Interior to avoid potential liability to the Federal government. Also, the Department would like the opportunity to finalize the map cited in the legislation to ensure the accuracy of the federal parcels to be transferred.

The acquisition of the non-federal parcels would consolidate National Forest land ownership in and around the historic Ashcroft Townsite and on Smuggler Mountain. The non-federal parcels and surrounding lands are a popular sightseeing and recreation destination used for nordic skiing and contain historic structures associated with the U.S. Army's 10th Mountain Division during World War II.

Section 5 (a)–(c) of the bill would require that the value of the federal and non-federal lands directed to be exchanged under S. 100 be equal, with values being determined by appraisal conducted in accordance with the Uniform Appraisal Standards for Federal Land Acquisitions, the Uniform Standards of Professional Appraisal Practices and the Forest Service appraisal instructions. The bill includes provisions on equalizing values, if necessary.

Section 5(d)(1)(A) of the bill requires Pitkin County to grant to an entity acceptable to the Secretary of the Interior a permanent conservation easement. The conservation easement would provide for public access on the BLM parcel conveyed to the County and would limit future use to recreational, fish and wildlife and open space purposes only. However, under section 5(b)(2) of the bill, the appraiser would be directed not to consider the easement in appraising this parcel.

This concludes my statement, I would be happy to answer any questions that you may have.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the Act H.R. 1129 as ordered reported.

